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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,514	03/30/2004	Sheila Marie Winship	F6189(V)	6130

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UNILEVER INTELLECTUAL PROPERTY GROUP  
700 SYLVAN AVENUE,  
BLDG C2 SOUTH  
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER
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WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/02/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/813,514	<b>Applicant(s)</b> WINSHIP ET AL.	
	<b>Examiner</b> Steven L. Weinstein	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/24/05</u> . | 6) <input type="checkbox"/> Other: ____  |

Art Unit: 1761

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicants' admission of the prior art, as evidenced for example, by Succar et al (7,074,451), further in view of Gallaher et al (5,965,190), further in view of Becker (3,976,805) and Wagner(3,892,8770).

In regard to claim 1, Applicants' admission of the prior art as further evidenced by Succar et al, disclose it was conventional to prepare tomato products including the step of recombining thick and thin streams, usually after the two different streams have undergone some processing which processing differs with each stream. Applicants' admission of the prior art also teaches it was conventional to homogenize a tomato based composition. Claim 1 differs from applicants' admission of the prior art in that the conventional recombined streams are subject to a particular shear at a particular temperature. It is noted that homogenizing in the art and with particular reference to tomato processing, equates to exposing the product to shear. For example, Gallaher et al discloses that it was well established in the art to subject tomato compositions to shear homogenization and Gallaher et al discloses employing high pressure, high shear homogenization. Gallaher et al discloses that all types of tomato compositions including slurries, a tomato paste, puree, juice and a mixture of tomato solids can all be subjected to high pressure, high shear homogenization. Gallaher et al discloses that the results of

Art Unit: 1761

employing high pressure, high shear homogenization are products that have increased viscosity (viscosity in excess of products with similar tomato solids content), increased uniformity and improved color. It is not clear from Gallaher et al whether a combined thick and thin stream is treated or not. However, since Gallaher et al discloses the advantages are obtainable with tomato compositions having a wide range of net total tomato solids and since Gallaher et al discloses the composition can be treated after all ingredients have been added, to modify applicants' admission of the prior art and treat the conventional recombined thick and thin streams for the advantages detailed by Gallaher et al, and desired by applicants, would have been obvious. It is also noted that since the claims do not recite any processing of the so-called thick and thin streams – only that they are recombined – it is not seen that there is any significant difference in the product the claims treat with high pressure and high shear and the tomato paste, puree, juice or mixture of solids that Gallaher et al treats with high pressure, high shear. In regard to the recited temperature, Gallaher et al discloses the recited temperature and in regard to the recited shear, the particular recited shear, if indeed not already inherent in Gallaher et al, would have been an obvious routine determination. Becker and Wagner are relied on as further evidence of homogenizing tomato compositions with high shear to improve the properties of the composition. They also teach it would have been obvious to provide multiple shearing steps. Claims 2-11 are rejected for the reasons given above.

The remainder of the references cited on the PTO892 form are cited as pertinent.

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER  
3/1/07 1761